

AMENDED IN SENATE MAY 8, 2006

SENATE BILL

No. 1750

Introduced by Senator Vincent

February 24, 2006

An act to amend Sections 8265 and 8448 of, to repeal Section 8269 of, and to repeal and add Sections 8267 and 8268 of, the Education Code, relating to child development centers, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1750, as amended, Vincent. Child development centers: funding and auditing.

Existing law establishes a system of child care and development services for children up to 13 years of age and provides certain requirements for the payment by the state for these child care and development services. Existing law establishes reimbursement rates, including requirements for their adjustment and application.

~~This bill would establish a role in the reimbursement rate process for the Joint Legislative Budget Committee by requiring the State Department of Education to provide it with a list of new requirements for the operation of child care development centers and any unusual industry-wide increases in costs associated with the provision of center-based child care by October 1, 2006, and annually thereafter, so the Joint Legislative Budget Committee can determine whether to appropriate funds for the adjustment of the reimbursement rate for the next fiscal year.~~

This bill would require the State Department of Education to only enforce statutes and regulations relating to the funding and reimbursement of child care development centers that were made

available in writing to center-based contractors~~and~~. *The bill would prohibit the department from applying and enforcing administrative procedures, audit requirements, or other requirements during the term of a contract unless the contractor was informed in writing, other than a reference to the requirement on the Web site of the department, of the requirements prior to the first day on which the contract was effective. The bill would require the contractors to account separately for all sources of funds when they receive state funds in addition to the standard reimbursement rate. This bill would require the ~~State Department of Education~~ department to establish protocols to ensure that a contractor is not reimbursed twice for the same activity, personnel, or function, and would prohibit the ~~State Department of Education~~ department from including any charitable donations received by any charitable or nonprofit organizations in any calculations of the state funding available to child care contractors.*

This bill would repeal the requirement that specified licensed community care providers include a sampling of fees paid by families of nonsubsidized children, the average enrollment of subsidized and nonsubsidized children, the average number of days of service provided to subsidized children, and the services provided to subsidized children pursuant to the terms of the contract of the provider.

This bill would require private child care providers that expend \$500,000 or more in total federal funds to conduct the annual single independent financial and compliance audit in compliance with specified federal provisions and would require audits of governmental and other public entities, school districts, county offices of education, and community college school districts, to meet specified requirements. The bill would require annual single independent financial and compliance audits that are not required to comply with specified federal provisions to report income and expenditures from sources other than the ~~State Department of Education~~ department that are used to supplement or enhance the department child development program, or to fund nonsubsidized children served in the same classrooms as subsidized children, and to account for these funds from funding sources other than the department as specified.

This bill also would reorganize existing provisions of law and would make additional, nonsubstantive changes.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) There is increasing interest in expanding the availability of
4 preschools and child development centers in California, which
5 may be funded by multiple sources and funding agencies.

6 (b) It is in the interest of the state to protect against
7 supplanting the existing services for low-income families, and to
8 ensure that providers of child care are not paid twice for the same
9 service.

10 (c) In order to avoid a chilling effect on private fundraising for
11 preschools and child development centers, unrestricted charitable
12 funds raised by nonprofit organizations to support these child
13 care programs should not be deducted from the public funding
14 available to the child care programs.

15 (d) Funding regulations and auditing procedures should be
16 made explicit to all parties in advance of their application.

17 SEC. 2. Section 8265 of the Education Code is amended to
18 read:

19 8265. (a) (1) The Superintendent shall implement a plan that
20 establishes reasonable standards and assigned reimbursement
21 rates, which vary with the length of the program year and the
22 hours of service.

23 (2) Parent fees shall be used to pay reasonable and necessary
24 costs for providing additional services.

25 (3) When establishing standards and assigned reimbursement
26 rates, the Superintendent shall confer with applicant agencies.

27 (4) The reimbursement system, including standards and rates,
28 shall be submitted to the Joint Legislative Budget Committee.

29 (5) The Superintendent may establish any regulations he or
30 she deems advisable concerning conditions of service and hours
31 of enrollment for children in the programs.

32 (b) The standard reimbursement rate shall be three thousand
33 five hundred twenty-three dollars (\$3,523) per unit of average
34 daily enrollment for a 250-day year, increased by the

1 cost-of-living adjustment granted by the Legislature beginning
2 July 1, 1980.

3 (c) The plan shall require agencies having an assigned
4 reimbursement rate above the current year standard
5 reimbursement rate to reduce costs on an incremental basis to
6 achieve the standard reimbursement rate.

7 (d) (1) The plan shall provide for adjusting reimbursement on
8 a case-by-case basis, in order to maintain service levels for
9 agencies currently at a rate less than the standard reimbursement
10 rate. Assigned reimbursement rates shall be increased only on the
11 basis of one or more of the following:

12 (A) Loss of program resources from other sources.

13 (B) Need of an agency to pay the same child care rates as
14 those prevailing in the local community.

15 (C) Increased costs directly attributable to new or different
16 regulations.

17 (D) Documented increased costs necessary to maintain the
18 level of service of the prior year and ensure the continuation of
19 threatened programs.

20 (2) Child care agencies funded at the lowest rates shall be
21 given first priority for increases.

22 (e) The plan shall provide for expansion of child development
23 programs at no more than the standard reimbursement rate for
24 that fiscal year.

25 (f) The Superintendent may reduce the percentage of reduction
26 for any public agency:

27 (1) That is currently serving more than 400 children; or

28 (2) That has in effect a collective bargaining agreement; or

29 (3) For which other extenuating circumstances apply as
30 determined by the Superintendent.

31 ~~(g) The State Department of Education shall, by October 1 of~~
32 ~~each year, commencing with October 1, 2006, provide the Joint~~
33 ~~Legislative Budget Committee with a list of any new~~
34 ~~departmental requirements concerning the operation of child care~~
35 ~~development program centers established during the previous~~
36 ~~fiscal year, and of any unusual, industry-wide increase in costs~~
37 ~~associated with the provision of center-based child care that may~~
38 ~~have a significant fiscal impact on such program costs. The Joint~~
39 ~~Legislative Budget Committee may, in fiscal year 2006-07 and~~
40 ~~beyond, use the list to determine whether an appropriation for an~~

1 adjustment in the standardized reimbursement rate is needed for
2 the subsequent fiscal year.

3 SEC. 3. Section 8267 of the Education Code is repealed.

4 SEC. 4. Section 8267 is added to the Education Code, to read:

5 8267. (a) The Superintendent shall adopt rules, regulations,
6 and guidelines to facilitate the funding and reimbursement
7 procedures required by this chapter.

8 (b) The State Department of Education shall apply and enforce
9 only those statutes and regulations that are made available to
10 center-based contractors, in writing, for any period in which a
11 rate is effective. *The department shall not apply and enforce an*
12 *administrative procedure, audit requirement, or other*
13 *requirement during the term of a contract unless the contractor*
14 *was informed, in writing, of the administrative procedure, audit*
15 *requirement, or other requirement prior to the first day on which*
16 *the contract became effective. For purposes of this subdivision, a*
17 *reference to a rule, regulation, or other requirement on the Web*
18 *site of the department does not satisfy the written notification*
19 *requirement.*

20 (c) The Superintendent and the State Controller shall establish
21 the necessary plans to advance child care funds to contracting
22 agencies on a timely basis.

23 SEC. 5. Section 8268 of the Education Code is repealed.

24 SEC. 6. Section 8268 is added to the Education Code, to read:

25 8268. (a) Any contractor may, in its discretion, pay from its
26 own funds additional sums for the child care of any subsidized
27 child, and the state, a county, or other funding entity may
28 augment a program or fund additional child care openings at the
29 same center.

30 (b) In any case where additional funding is provided, pursuant
31 to subdivision (a), for a program funded by a standard
32 reimbursement rate, the contractor shall separately account for all
33 sources of funds. The State Department of Education shall
34 establish protocols to ensure that the state is not reimbursing a
35 contractor for the same activity, personnel, or function for which
36 another funding agency has paid.

37 (c) General unrestricted or undesignated private charitable
38 donations and contributions made to charitable or nonprofit
39 organizations shall not be deducted from the cost of providing
40 services calculated by the contractor. The donations and

1 contributions shall not be considered in any determination of the
2 state funding available to the contractor made by the State
3 Department of Education.

4 SEC. 7. Section 8269 of the Education Code is repealed.

5 SEC. 8. Section 8448 of the Education Code is amended to
6 read:

7 8448. As used in this article:

8 (a) “Financial and compliance audit” means a systematic
9 review or appraisal to determine each of the following:

10 (1) Whether the financial statements of an audited
11 organization fairly present the financial position and the results
12 of financial operations in accordance with generally accepted
13 accounting principles.

14 (2) Whether the organization has complied with laws and
15 regulations that may have a material effect upon the financial
16 statements.

17 (b) “Public accountants” means certified public accountants,
18 or state licensed public accountants.

19 (c) “Independent auditors” means public accountants who
20 have no direct or indirect relationship with the functions or
21 activities being audited or with the business conducted by any of
22 the officials or contractors being audited.

23 (d) “Generally accepted auditing standards” means the
24 auditing standards set forth in the financial and compliance
25 element of the “Government Auditing Standards” issued by the
26 Comptroller General of the United States and incorporating the
27 audit standards of the American Institute of Certified Public
28 Accountants.

29 (e) “Direct service contract” means any contract with any
30 public or private entity for child care and development programs,
31 resource and referral programs, and programs contracting to
32 provide support services as defined in Section 8208.

33 (f) “Nonprofit organization” means an organization described
34 in Section 501(c)(3) of the Internal Revenue Code of 1954 that is
35 exempt from taxation under Section 501(a) of that code, or any
36 nonprofit, scientific, or educational organization qualified under
37 Section 23701d of the Revenue and Taxation Code.

38 (g) (1) Annually, there shall be a single independent financial
39 and compliance audit of organizations that contract with the state
40 under a direct service contract. Any such audit shall include an

1 evaluation of the accounting and control systems of the direct
2 service contractor and of the activities by the contractor to
3 comply with the financial requirements of direct service contracts
4 received by the contractor from the state agency. The financial
5 and compliance requirements to be reviewed during the audit
6 shall be those developed and published by the State Department
7 of Education in consultation with the Department of Finance.
8 Audits carried out pursuant to this section shall be audits of the
9 contractor rather than audits of individual contracts or programs.
10 In the case of any contractor that receives less than twenty-five
11 thousand dollars (\$25,000) per year from any state agency, the
12 audit required by this section shall be conducted biennially,
13 unless there is evidence of fraud or other violation of state law in
14 connection with the direct service contract. The cost of the audit
15 may be included in direct service contracts.

16 (2) The organization receiving funds from the state shall be
17 responsible for obtaining the required financial and compliance
18 audits of the organization and any subcontractors, except for
19 direct service subcontracts and other subcontracts exempt from
20 State Department of Education review, as agreed to by the
21 Departments of Finance and General Services. The audits shall
22 be made by independent auditors in accordance with generally
23 accepted auditing standards. The audit shall be completed by the
24 15th day of the fifth month following the end of the fiscal year of
25 the contractor. A copy of the required audit shall be filed with the
26 State Department of Education upon its completion. In the event
27 an audit is not filed, the State Department of Education shall
28 notify the organization of the contract violation. The audit report
29 filed shall be an integral part of the direct service contract file.

30 (h) (1) Nothing in this article limits the authority of the State
31 Department of Education to make audits of direct service
32 contracts. However, if independent audits arranged for by direct
33 service contractors meet generally accepted auditing standards,
34 the State Department of Education shall rely on those audits and
35 any additional audit work shall build upon the work already
36 done.

37 (2) Nothing in this article precludes the state from conducting,
38 or contracting for the conduct of, contract performance audits
39 that are not financial and compliance audits.

1 (3) Nothing in this article limits the state's responsibility or
2 authority to enforce state law or regulations, procedures, or
3 reporting requirements arising pursuant thereto.

4 (4) Nothing in this article limits the responsibility of the State
5 Department of Education to provide an independent appeal
6 procedure according to the provisions of the Administrative
7 Procedure Act (Chapter 5 (commencing with Section 11500) of
8 Part 1 of Division 3 of Title 2 of the Government Code).

9 (i) Private nonprofit and private for profit entities that provide
10 child care and development services and that expend five
11 hundred thousand dollars (\$500,000) or more in total federal
12 funds, including all federal funds received by the entity whether
13 or not used in connection with a child development program, are
14 required to conduct the annual single independent financial and
15 compliance audit in accordance with the federal Office of
16 Management and Budget Circular A-133, as the document
17 appeared after it was revised to show changes published in the
18 Federal Register on June 27, 2003, including the organization
19 wide audit requirements explained in subpart C of Circular
20 A-133. Audits of governmental and other public entities that
21 provide child care and development services, excluding school
22 districts, county offices of education, and community college
23 districts, ~~must~~ *shall* also comply with the requirements of the
24 federal Office of Management and Budget Circular A-133.
25 Audits of school districts, county offices of education, and
26 community college school districts, ~~must~~ *shall* comply with all
27 applicable state Education Code requirements.

28 (j) Annual single independent financial and compliance audits
29 that are not required to comply with the federal organization
30 wide audit requirements included in subpart C of the federal
31 Office of Management and Budget Circular A-133 shall report
32 income and expenditures from sources other than the State
33 Department of Education that are used to supplement or enhance
34 the department child development program, or to fund
35 nonsubsidized children served in the same classrooms as
36 subsidized children. These funds from funding sources other than
37 the department may be accounted for in the accounts of the
38 agencies under either the federal Child Care and Development
39 Fund, which has the same meaning as in Section 98.2 of Title 45
40 of the Code of Federal Regulations, or any other fund maintained

1 by the contractor, provided that the income and any expenses are
2 reported in the audit.

3 SEC. 9. This act is an urgency statute necessary for the
4 immediate preservation of the public peace, health, or safety
5 within the meaning of Article IV of the Constitution and shall go
6 into immediate effect. The facts constituting the necessity are:

7 In order to ensure the proper fiscal accounting for the
8 expansion of preschools and child care development centers, it is
9 necessary that this act take effect immediately.

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12 CORRECTIONS: _____

13 Amended Date - Page 1.
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